
SUBSTITUTE HOUSE BILL 2073

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Wood, Kenney, Moeller, Simpson and Ormsby; by request of Governor Gregoire)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to a pilot program for vocational rehabilitation
2 services; amending RCW 51.32.095; adding new sections to chapter 51.32
3 RCW; creating a new section; providing an effective date; and providing
4 an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read
7 as follows:

8 (1) One of the primary purposes of this title is to enable the
9 injured worker to become employable at gainful employment. To this
10 end, the department or self-insurers shall utilize the services of
11 individuals and organizations, public or private, whose experience,
12 training, and interests in vocational rehabilitation and retraining
13 qualify them to lend expert assistance to the supervisor of industrial
14 insurance in such programs of vocational rehabilitation as may be
15 reasonable to make the worker employable consistent with his or her
16 physical and mental status. Where, after evaluation and recommendation
17 by such individuals or organizations and prior to final evaluation of
18 the worker's permanent disability and in the sole opinion of the
19 supervisor or supervisor's designee, whether or not medical treatment

1 has been concluded, vocational rehabilitation is both necessary and
2 likely to enable the injured worker to become employable at gainful
3 employment, the supervisor or supervisor's designee may, in his or her
4 sole discretion, pay or, if the employer is a self-insurer, direct the
5 self-insurer to pay the cost as provided in subsection (3) of this
6 section or section 2 of this act, as appropriate.

7 (2) When in the sole discretion of the supervisor or the
8 supervisor's designee vocational rehabilitation is both necessary and
9 likely to make the worker employable at gainful employment, then the
10 following order of priorities shall be used:

11 (a) Return to the previous job with the same employer;

12 (b) Modification of the previous job with the same employer
13 including transitional return to work;

14 (c) A new job with the same employer in keeping with any
15 limitations or restrictions;

16 (d) Modification of a new job with the same employer including
17 transitional return to work;

18 (e) Modification of the previous job with a new employer;

19 (f) A new job with a new employer or self-employment based upon
20 transferable skills;

21 (g) Modification of a new job with a new employer;

22 (h) A new job with a new employer or self-employment involving on-
23 the-job training;

24 (i) Short-term retraining and job placement.

25 (3)(a) (~~Except as provided in (b) of this subsection~~) For
26 vocational plans approved prior to July 1, 1999, costs for vocational
27 rehabilitation benefits allowed by the supervisor or supervisor's
28 designee under subsection (1) of this section may include the cost of
29 books, tuition, fees, supplies, equipment, transportation, child or
30 dependent care, and other necessary expenses for any such worker in an
31 amount not to exceed three thousand dollars in any fifty-two week
32 period except as authorized by RCW 51.60.060, and the cost of
33 continuing the temporary total disability compensation under RCW
34 51.32.090 while the worker is actively and successfully undergoing a
35 formal program of vocational rehabilitation.

36 (b) (~~Beginning with vocational rehabilitation plans approved on or~~
37 ~~after~~) When the department has approved a vocational plan for a worker
38 between July 1, 1999, through December 31, 2007, costs for vocational

1 rehabilitation benefits allowed by the supervisor or supervisor's
2 designee under subsection (1) of this section may include the cost of
3 books, tuition, fees, supplies, equipment, child or dependent care, and
4 other necessary expenses for any such worker in an amount not to exceed
5 four thousand dollars in any fifty-two week period except as authorized
6 by RCW 51.60.060, and the cost of transportation and continuing the
7 temporary total disability compensation under RCW 51.32.090 while the
8 worker is actively and successfully undergoing a formal program of
9 vocational rehabilitation.

10 (c) The expenses allowed under (a) or (b) of this subsection may
11 include training fees for on-the-job training and the cost of
12 furnishing tools and other equipment necessary for self-employment or
13 reemployment. However, compensation or payment of retraining with job
14 placement expenses under (a) or (b) of this subsection may not be
15 authorized for a period of more than fifty-two weeks, except that such
16 period may, in the sole discretion of the supervisor after his or her
17 review, be extended for an additional fifty-two weeks or portion
18 thereof by written order of the supervisor.

19 (d) In cases where the worker is required to reside away from his
20 or her customary residence, the reasonable cost of board and lodging
21 shall also be paid.

22 (e) Costs paid under this subsection shall be chargeable to the
23 employer's cost experience or shall be paid by the self-insurer as the
24 case may be.

25 (4) In addition to the vocational rehabilitation expenditures
26 provided for under subsection (3) of this section and section 2 of this
27 act, an additional five thousand dollars may, upon authorization of the
28 supervisor or the supervisor's designee, be expended for: (a)
29 Accommodations for an injured worker that are medically necessary for
30 the worker to participate in an approved retraining plan; and (b)
31 accommodations necessary to perform the essential functions of an
32 occupation in which an injured worker is seeking employment, consistent
33 with the retraining plan or the recommendations of a vocational
34 evaluation. The injured worker's attending physician must verify the
35 necessity of the modifications or accommodations. The total
36 expenditures authorized in this subsection and the expenditures
37 authorized under RCW 51.32.250 shall not exceed five thousand dollars.

1 (5) When the department has approved a vocational plan for a worker
2 prior to January 1, 2008, regardless of whether the worker has begun
3 participating in the approved plan, costs for vocational rehabilitation
4 benefits allowed by the supervisor or supervisor's designee under
5 subsection (1) of this section are limited to those provided under
6 subsections (3) and (4) of this section.

7 For vocational plans approved for a worker between January 1, 2008,
8 through June 30, 2013, total vocational costs allowed by the supervisor
9 or supervisor's designee under subsection (1) of this section shall be
10 limited to those provided under the pilot program established in
11 section 2 of this act, and vocational rehabilitation services shall
12 conform to the requirements in section 2 of this act.

13 (6) The department shall establish criteria to monitor the quality
14 and effectiveness of rehabilitation services provided by the
15 individuals and organizations used under subsection (1) of this section
16 and under section 2 of this act. The state fund shall make referrals
17 for vocational rehabilitation services based on these performance
18 criteria.

19 (~~(+6)~~) (7) The department shall engage in, where feasible and
20 cost-effective, a cooperative program with the state employment
21 security department to provide job placement services under this
22 section and section 2 of this act.

23 (~~(+7)~~) (8) The benefits in this section and section 2 of this act
24 shall be provided for the injured workers of self-insured employers.
25 Self-insurers shall report both benefits provided and benefits denied
26 under this section and section 2 of this act in the manner prescribed
27 by the department by rule adopted under chapter 34.05 RCW. The
28 director may, in his or her sole discretion and upon his or her own
29 initiative or at any time that a dispute arises under this section or
30 section 2 of this act, promptly make such inquiries as circumstances
31 require and take such other action as he or she considers will properly
32 determine the matter and protect the rights of the parties.

33 (~~(+8)~~) (9) Except as otherwise provided in this section or section
34 2 of this act, the benefits provided for in this section and section 2
35 of this act are available to any otherwise eligible worker regardless
36 of the date of industrial injury. However, claims shall not be
37 reopened solely for vocational rehabilitation purposes.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.32 RCW
2 to read as follows:

3 (1)(a) The legislature intends to create improved vocational
4 outcomes for Washington state injured workers and employers through
5 legislative and regulatory change under a pilot program for the period
6 of January 1, 2008, through June 30, 2013. This pilot vocational
7 system is intended to allow opportunities for eligible workers to
8 participate in meaningful retraining in high demand occupations,
9 improve successful return to work and achieve positive outcomes for
10 workers, reduce the incidence of repeat vocational services, increase
11 accountability and responsibility, and improve cost predictability. To
12 facilitate the study and evaluation of the results of the proposed
13 changes, the department shall establish the temporary funding of
14 certain vocational costs through the medical aid account to ensure the
15 appropriate assessments to employers for the costs of their claims for
16 vocational services in accordance with section 3 of this act.

17 (b) An independent review and study of the effects of the pilot
18 program shall be conducted to determine whether it has achieved the
19 appropriate outcomes at reasonable cost to the system. The review
20 shall include, at a minimum, a report on the department's performance
21 with regard to the provision of vocational services, the skills
22 acquired by workers who receive retraining services, the types of
23 training programs approved, whether the workers are employed, at what
24 jobs and wages after completion of the training program and at various
25 times subsequent to their claim closure, the number and demographics of
26 workers who choose the option provided in subsection (4)(b) of this
27 section, and their employment and earnings status at various times
28 subsequent to claim closure. The department may adopt rules, in
29 collaboration with the subcommittee created under (c)(iii) of this
30 subsection, to further define the scope and elements of the required
31 study. Reports of the independent researcher are due on December 1,
32 2010, December 1, 2011, and December 1, 2012.

33 (c) In implementing the pilot program, the department shall:

34 (i) Establish a vocational initiative project that includes
35 participation by the department as a partner with WorkSource, the
36 established state system that administers the federal workforce
37 investment act of 1998. As a partner, the department shall place
38 vocational professional full-time employees at pilot WorkSource

1 locations; refer some workers for vocational services to these
2 vocational professionals; and work with employers in work source pilot
3 areas to market the benefits of on-the-job training programs and with
4 community colleges to reserve slots in high demand programs. These on-
5 the-job training programs and community college slots may be considered
6 by both department and private sector vocational professionals for
7 vocational plan development.

8 (ii) Develop and maintain a register of state fund and self-
9 insured workers who have been retrained or have selected any of the
10 vocational options described in this section for at least the duration
11 of the pilot program.

12 (iii) Create a vocational rehabilitation subcommittee made up of
13 members appointed by the director for at least the duration of the
14 pilot program. This subcommittee shall provide the business and labor
15 partnership needed to maintain focus on the intent of the pilot
16 program, as described in this section, and provide consistency and
17 transparency to the development of rules and policies. The
18 subcommittee shall report to the director at least annually and
19 recommend to the director and the legislature any additional statutory
20 changes needed, which may include extension of the pilot period. The
21 subcommittee shall provide input and oversight with the department
22 concerning the study required under (b) of this subsection. The
23 subcommittee shall provide recommendations for additional changes or
24 incentives for injured workers to return to work with their employer of
25 injury.

26 (iv) The department shall develop an annual report concerning
27 Washington's workers' compensation vocational rehabilitation system to
28 the legislature and to the subcommittee by December 1, 2009, and
29 annually thereafter with the final report due by December 1, 2012. The
30 annual report shall include the number of workers who have participated
31 in more than one vocational training plan beginning with plans approved
32 on January 1, 2008, and in which industries those workers were
33 employed. The final report shall include the department's assessment
34 and recommendations for further legislative action, in collaboration
35 with the subcommittee.

36 (2)(a) For the purposes of this section, the day the worker
37 commences vocational plan development means the date the department or

1 self-insurer notifies the worker of his or her eligibility for plan
2 development services.

3 (b) When vocational rehabilitation is both necessary and likely to
4 make the worker employable at gainful employment, he or she shall be
5 provided with services necessary to develop a vocational plan that, if
6 completed, would render the worker employable. The vocational
7 professional assigned to the claim shall, at the initial meeting with
8 the worker, fully inform the worker of the return-to-work priorities
9 set forth in RCW 51.32.095(2) and of his or her rights and
10 responsibilities under the workers' compensation vocational system.
11 The department shall provide tools to the vocational professional for
12 communicating this and other information required by RCW 51.32.095 and
13 this section to the worker.

14 (c) On the date the worker commences vocational plan development,
15 the department shall also inform the employer in writing of the
16 employer's right to make a valid return-to-work offer during the first
17 fifteen days following the commencement of vocational plan development.
18 To be valid, the offer must be for bona fide employment with the
19 employer of injury, consistent with the worker's documented physical
20 and mental restrictions as provided by the worker's health care
21 provider. When the employer makes a valid return-to-work offer, the
22 vocational plan development services and temporary total disability
23 compensation shall be terminated effective the starting date for the
24 job without regard to whether the worker accepts the return-to-work
25 offer. Following the fifteen-day period, the employer may still
26 provide, and the worker may accept, any valid return-to-work offer.
27 The worker's acceptance of such an offer shall result in the
28 termination of vocational plan development or implementation services
29 and temporary total disability compensation effective the day the
30 employment begins.

31 (3)(a) All vocational plans must contain an accountability
32 agreement signed by the worker detailing expectations regarding
33 progress, attendance, and other factors influencing successful
34 participation in the plan. Failure to abide by the agreed expectations
35 shall result in suspension of vocational benefits pursuant to RCW
36 51.32.110.

37 (b) Any formal education included as part of the vocational plan

1 must be for an accredited or licensed program or other program approved
2 by the department. The department shall develop rules that provide
3 criteria for the approval of nonaccredited or unlicensed programs.

4 (c) The vocational plan for an individual worker must be completed
5 and submitted to the department within ninety days of the day the
6 worker commences vocational plan development. The department may
7 extend the ninety days for good cause. Criteria for good cause shall
8 be provided in rule. The frequency and reasons for good cause
9 extensions shall be reported to the subcommittee created under
10 subsection (1)(c)(iii) of this section.

11 (d) Costs for the vocational plan may include books, tuition, fees,
12 supplies, equipment, child or dependent care, training fees for on-the-
13 job training, the cost of furnishing tools and other equipment
14 necessary for self-employment or reemployment, and other necessary
15 expenses in an amount not to exceed twelve thousand dollars. This
16 amount shall be adjusted effective July 1 of each year for vocational
17 plans or retraining benefits available under subsection (4)(b) of this
18 section approved on or after this date but before June 30 of the next
19 year based on the average percentage change in tuition for the next
20 fall quarter for all Washington state community colleges.

21 (e) The duration of the vocational plan shall not exceed two years
22 from the date the plan is implemented. The worker shall receive
23 temporary total disability compensation under RCW 51.32.090 and the
24 cost of transportation while he or she is actively and successfully
25 participating in a vocational plan.

26 (f) If the worker is required to reside away from his or her
27 customary residence, the reasonable cost of board and lodging shall
28 also be paid.

29 (4) Vocational plan development services shall be completed within
30 ninety days of commencing. During vocational plan development the
31 worker shall, with the assistance of a vocational professional,
32 participate in vocational counseling and occupational exploration to
33 include, but not be limited to, identifying possible job goals,
34 training needs, resources, and expenses, consistent with the worker's
35 physical and mental status. A vocational rehabilitation plan shall be
36 developed by the worker and the vocational professional and submitted
37 to the department or self-insurer. Following this submission, the
38 worker shall elect one of the following options:

1 (a) Option 1: The department or self-insurer implements and the
2 worker participates in the vocational plan developed by the vocational
3 professional and approved by the worker and the department or
4 self-insurer. For state fund claims, the department must review and
5 approve the vocational plan before implementation may begin. If the
6 department takes no action within fifteen days, the plan is deemed
7 approved. The worker may, within fifteen days of approval of the plan
8 by the department, elect option 2.

9 (i) Following successful completion of the vocational plan, any
10 subsequent assessment of whether vocational rehabilitation is both
11 necessary and likely to enable the injured worker to become employable
12 at gainful employment under RCW 51.32.095(1) shall include
13 consideration of transferable skills obtained in the vocational plan.

14 (ii) If a vocational plan is successfully completed on a claim
15 which is thereafter reopened as provided in RCW 51.32.160, the cost and
16 duration available for any subsequent vocational plan is limited to
17 that in subsection (3)(d) and (e) of this section, less that previously
18 expended.

19 (b) Option 2: The worker declines further vocational services
20 under the claim and receives an amount equal to six months of temporary
21 total disability compensation under RCW 51.32.090. The award is
22 payable in biweekly payments in accordance with the schedule of
23 temporary total disability payments, until such award is paid in full.
24 These payments shall not include interest on the unpaid balance.
25 However, upon application by the worker, and at the discretion of the
26 department, the compensation may be converted to a lump sum payment.
27 The vocational costs defined in subsection (3)(d) of this section shall
28 remain available to the worker, upon application to the department or
29 self-insurer, for a period of five years. The vocational costs shall,
30 if expended, be available for programs or courses at any accredited or
31 licensed institution or program from a list of those approved by the
32 department for tuition, books, fees, supplies, equipment, and tools,
33 without department or self-insurer oversight. The department shall
34 issue an order as provided in RCW 51.52.050 confirming the option 2
35 election, setting a payment schedule, and terminating temporary total
36 disability benefits. The department shall thereafter close the claim.

37 (i) If within five years from the date the option 2 order becomes
38 final, the worker is subsequently injured or suffers an occupational

1 disease or reopens the claim as provided in RCW 51.32.160, and
2 vocational rehabilitation is found both necessary and likely to enable
3 the injured worker to become employable at gainful employment under RCW
4 51.32.095(1), the duration of any vocational plan under subsection
5 (3)(e) of this section shall not exceed eighteen months.

6 (ii) If the available vocational costs are utilized by the worker,
7 any subsequent assessment of whether vocational rehabilitation is both
8 necessary and likely to enable the injured worker to become employable
9 at gainful employment under RCW 51.32.095(1) shall include
10 consideration of the transferable skills obtained.

11 (iii) If the available vocational costs are utilized by the worker
12 and the claim is thereafter reopened as provided in RCW 51.32.160, the
13 cost available for any vocational plan is limited to that in subsection
14 (3)(d) of this section less that previously expended.

15 (iv) Option 2 may only be elected once per worker.

16 (c) The director, in his or her sole discretion, may provide the
17 worker vocational assistance not to exceed that in subsection (3) of
18 this section, without regard to the worker's prior option selection or
19 benefits expended, where vocational assistance would prevent permanent
20 total disability under RCW 51.32.060.

21 (5)(a) As used in this section, "vocational plan interruption"
22 means an occurrence which disrupts the plan to the extent the
23 employability goal is no longer attainable. "Vocational plan
24 interruption" does not include institutionally scheduled breaks in
25 educational programs, occasional absence due to illness, or
26 modifications to the plan which will allow it to be completed within
27 the cost and time provisions of subsection (3)(d) and (e) of this
28 section.

29 (b) When a vocational plan interruption is beyond the control of
30 the worker, the department or self-insurer shall recommence plan
31 development. If necessary to complete vocational services, the cost
32 and duration of the plan may include credit for that expended prior to
33 the interruption. A vocational plan interruption is considered outside
34 the control of the worker when it is due to the closure of the
35 accredited institution, when it is due to a death in the worker's
36 immediate family, or when documented changes in the worker's accepted
37 medical conditions prevent further participation in the vocational
38 plan.

1 (c) When a vocational plan interruption is the result of the
2 worker's actions, the worker's entitlement to benefits shall be
3 suspended in accordance with RCW 51.32.110. If plan development or
4 implementation is recommenced, the cost and duration of the plan shall
5 not include credit for that expended prior to the interruption. A
6 vocational plan interruption is considered a result of the worker's
7 actions when it is due to the failure to meet attendance expectations
8 set by the training or educational institution, failure to achieve
9 passing grades or acceptable performance review, unaccepted or
10 postinjury conditions that prevent further participation in the
11 vocational plan, or the worker's failure to abide by the accountability
12 agreement per subsection (3)(a) of this section.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.32 RCW
14 to read as follows:

15 (1) Costs paid for vocational services and plans shall be
16 chargeable to the employer's cost experience or shall be paid by the
17 self-insurer, as the case may be. For vocational plans implemented on
18 or after January 1, 2008, the costs may be paid from the medical aid
19 fund at the sole discretion of the director under the following
20 circumstances:

21 (a) The worker previously participated in a vocational plan or
22 selected a worker option as described in section 2(4) of this act;

23 (b) The worker's prior vocational plan or selected option was based
24 on an approved plan or option on or after January 1, 2008;

25 (c) For state fund employers, the date of injury or disease
26 manifestation of the subsequent claim is within the period of time used
27 to calculate their experience factor;

28 (d) The subsequent claim is for an injury or occupational disease
29 that resulted from employment and work-related activities beyond the
30 worker's documented restrictions.

31 (2) The vocational plan costs payable from the medical aid fund
32 shall include the costs of temporary total disability benefits, except
33 those payable from the supplemental pension fund, from the date the
34 vocational plan is implemented to the date the worker completes the
35 plan or ceases participation. The vocational costs paid from the
36 medical aid fund shall not be charged to the state fund employer's cost
37 experience. The self-insured employer whose worker participated in a

1 plan as described in subsection (1) (a) through (d) of this section may
2 request that the director exercise his or her discretion to reimburse
3 the employer from the medical aid fund for the vocational plan costs
4 and temporary total disability compensation paid.

5 (3) For the duration of the vocational pilot program, all expenses
6 to the medical aid fund resulting from the director's discretionary
7 decisions as provided in subsection (1) of this section shall be
8 separately documented as a medical aid fund expenditure and reported to
9 the vocational rehabilitation subcommittee and the legislature
10 annually. This report shall include the number of claims for which
11 relief to the employer was provided, the average cost per claim, and
12 whether the employers were state fund or self-insured. The vocational
13 rehabilitation subcommittee shall recommend assessments to
14 self-insurers as the subcommittee deems appropriate. The
15 subcommittee's recommendations shall include how any assessments should
16 be determined and shall take into consideration the number and costs of
17 reimbursements to self-insurers.

18 NEW SECTION. **Sec. 4.** The department of labor and industries shall
19 adopt rules necessary to implement this act.

20 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2008.

21 NEW SECTION. **Sec. 6.** This act expires June 30, 2013.

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